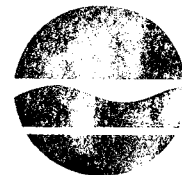


**New York State Department of Environmental Conservation
Division of Water, Region 7**

615 Erie Boulevard West, Syracuse, New York 13204-2400

Phone: (315) 426-7500 • **FAX:** (315) 426-7459

Website: www.dec.state.ny.us



Erin M. Crotty
Commissioner

September 24, 2004

Ms. Kimberly Lagomarsino,
Environmental Health and Safety Manager
Syracuse China
PO Box 4820
Syracuse, NY 13221-4820

**RE: Consent Order R7-20030903-81
Schedule of Compliance, Item #5**

Dear Ms. Lagomarsino:

The Department has reviewed your September 24, 2004 request to modify the above referenced Consent Order. The Department approves of extending the milestone date for submittal of the engineering report from September 30 to October 15. .

Please contact this office should there be any questions.

Sincerely,

Steven P. Eidt, PE
Regional Water Engineer

cc: Wendy Marsh, Esq.
Robert Geary, Barton and Loguidice, Engineers
Ken Lynch, NYSDEC
Sandy Lizlovs, NYSDEC

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)

ss.:

COUNTY OF ONONDAGA)

Diane L. Dohn, being duly sworn, deposes and says that she served the within consent order upon the following named person at the following time and place; viz: Hancock & Estabrook, LLP, Attn.: Wendy Marsh, Esq. by placing a true and correct copy of said material in a secure postpaid wrapper, addressed to said named person at: 1500 MONY Tower I, PO Box 4976, Syracuse, NY 13221-4976 that said material was mailed by her to said named person by certified mail with return receipt no. 7002 0860 0003 9747 9695 requested and was duly deposited by her in a post office box regularly maintained by the United States Government Post Office Department at 615 Erie Boulevard West, Syracuse, New York 13204-2400 on the 15th day of March 2004; that the address appearing on said wrapper is the last known address of said named person; that at the time of making such service deponent was of the age of eighteen years or over.

Diane Dohn

Sworn to and subscribed before me

this 15th day of MARCH 2004.

William F. Gallagher, Jr.
NOTARY PUBLIC

WILLIAM F. GALLAGHER, JR.
Notary Public, State of New York
Herkimer County
#02641 Reg. No. 1363550
Commission Expires April 30, 192007

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hancock & Estabrook, LLP
 Attn.: Wendy Marsh, Esq.
 1500 MONY Tower 1
 PO Box 4976
 Syracuse, NY 13221-4976

2. Article Number

(Transfer from service label)

7002 0860 0003 9747 9695

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature *James M. Walsh* ☒ Agent
☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

5696 9695 9747 0003 0860 2002

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

| | |
|---|----------------|
| Postage | \$ 1.83 |
| Certified Fee | 2.30 |
| Return Receipt Fee (Endorsement Required) | 1.75 |
| Restricted Delivery Fee (Endorsement Required) | |
| Total Postage & Fees | \$ 4.88 |

Postmark
 Here

Sent To Hancock & Estabrook, LLP
 Attn.: Wendy Marsh, Esq.

Street, Apt. 1500 MONY Tower 1
 or PO Box No.

PO Box 4976

City, State, ZIP + 4
 Syracuse, NY 13221-4976

PS Form 3800, April 2002

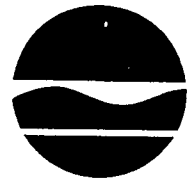
See Reverse for Instructions

**New York State Department of Environmental Conservation
Division of Legal Affairs, Region 7**

615 Erie Boulevard West, Syracuse, New York 13204-2400

Phone: (315) 426-7405 • FAX: (315) 426-7408

Website: www.dec.state.ny.us



Erin M. Crotty
Commissioner

March 15, 2004

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Hancock & Estabrook, LLP
Attn.: Wendy Marsh, Esq.
1500 MONY Tower 1
PO Box 4976
Syracuse, New York 13221-4976

Syracuse China Company
Attn.: Willie B. Purvis
Plant Manager
2900 Court Street
Syracuse, New York 13221

Re: DEC Case No. R7-20030903-81

Dear Attorney Marsh and Mr. Purvis:

Enclosed to each of you is a copy of the signed Consent Order, issued by this Department's Regional Director on March 11, 2004, together with a receipt for payment of the civil penalty provided in paragraph I of the Order.

Thank you for your cooperation in this matter.

Sincerely,

Diane L. Dohn
Keyboard Specialist 2

Enclosures

cc/w/enclosure: R. Coriale, DEC, Syracuse
B. Fein, DEC, Syracuse
S. Eidt/S. Lizlovs, DEC, Syracuse
Phil Harvard, Syracuse China

MOORE SECURITY MARK™ • MOORE SECURITY MARK™ • MOORE SECURITY MARK™

Libbey

P.O. Box 10060
Toledo, OH 43699-0060

Check No.
00385393

Vendor No.
4662079

64-1278/611

PAY

Date
12/19/03

Check Amt.
\$*****3,500.00

THREE THOUSAND FIVE HUNDRED AND 00/100 *****

To The Order of

NYS ENVIRONMENTAL CONSERVATION

Libbey Inc

Bank of America
ATLANTA, DEKALB COUNTY, GEORGIA

Kenneth A. Boergen
TREASURER
VOID AFTER 180 DAYS

⑈00385393⑈ ⑆061112788⑆ 010 116 0738⑈

32-01-3 (8/90)—10f



NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

RECEIPT

NUMBER

492961

Region Number 7

Date 3/12/04

Location Syracuse Division Legal Affairs

Received of Syracuse China (Libbey)

In the amount of Three thousand five hundred dollars \$ 3,500.00

For Violation of Article 17

DEC Case No. R7-20030903-81

☐ Cash Department Representative Diane L. Dohn

☒ Check Number 00385393 Title Keyboard Specialist 2

☐ Money Order

ORIGINAL

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

-----X

In the Matter of Alleged
Violations of Article 17-0501 of
the Environmental Conservation Law
(ECL) and of Title 6 of the
Official Compilation of Codes,
Rules and Regulations of the State
of New York (6 NYCRR) Part 750-1.4
by,

CONSENT
ORDER

CASE NO.
R7-20030903-81

Syracuse China
Salina (T)
Onondaga County, New York

Respondent.

-----X

1. The New York State Department of Environmental Conservation (the Department) is responsible for the administration and enforcement of Environmental Conservation Law (ECL) Article 17-0501 and 6 NYCRR Part 750-1.4.
2. Syracuse China Company, (Respondent) is located at 2900 Court Street, Syracuse New York 13221 (the Facility).
3. ECL 17-0501 prohibits any person, directly, or indirectly, to throw, drain, run or otherwise discharge into such waters organic or inorganic matter that shall cause or contribute to a condition in contravention of the standards adopted by the Department.

4. 6 NYCRR 750-1.4 states that no person shall discharge or cause a discharge of any pollutant without a SPDES permit having been issued to such person pursuant to this Article and ECL, Article 17, title 8, with respect to such discharge; and no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by such permit.

5. On April 1, 1999, Respondent was issued SPDES Permit No. NY 010-0137 (the Permit), regulating process water and storm water discharges from the Facility effective April 1, 1999.

6. On or about February 2001 thru November 2001, January 2002 thru October 2002, and March thru October 2003, at the Facility, Respondent's discharge from outfall 001 exceeded the pH limit in the Permit.

7. On or about March, May, and August 2001 at the Facility, Respondent's discharge from outfall 01A exceeded the Total Suspended Solids action level in the Permit. Respondent failed to do a 3 day, short term, high intensity monitoring of outfall 01A for Total Suspended Solids, as required by the Permit.

8. On or about June 2001 at the Facility, Respondent's discharge from outfall 01B exceeded the Total Suspended Solids action level in the Permit. Respondent failed to do a 3 day,

short term, high intensity monitoring of outfall 01B for Total Suspended Solids, as required by the Permit.

9. The conduct referred to in paragraph 6 above was in violation of the provisions of ECL 17-0501 and 6NYCRR 750-1.4.

10. Pursuant to ECL 71-1929, a person who commits the violation described in paragraph 6 above shall be liable to a penalty of \$25,000 per day.

11. Respondent, with respect to the violations described herein, affirmatively waive the right to a hearing on this matter as provided by law, and consents to the issuing and entering of this Order and agrees to be bound by the provisions, terms, and conditions contained herein.

NOW, having considered this matter and being duly advised, IT IS ORDERED THAT:

I. Respondent shall pay a civil penalty in the amount of Three Thousand Five Hundred Dollars (\$3,500), payment of which shall be made to the Department of Environmental Conservation at the office of the Regional Director, 615 Erie Boulevard West, Syracuse, New York 13204-2400, upon the Respondent's execution and return of this Order.

II. Respondent is further assessed a civil penalty in the amount of Five Thousand Dollars (\$5,000) payment of which is suspended as a penalty to guaranty compliance and shall become

payable in the event that Respondent fails to comply with the provisions, terms and conditions of this Order.

The penalty to guaranty compliance under this paragraph shall become due and payable within 15 calendar days after Respondent receives written notice from the Department that Respondent was or is in violation of this Order.

III. Respondent shall comply with the terms, provisions and conditions of the Schedule for Compliance annexed to and made a part of this Order.

IV. No change in this Order shall be made or become effective except as specifically set forth by a further written order of the Department, being made either upon written application to the Department by the Respondent setting forth the grounds for the relief sought or upon the Department's own findings after an opportunity for the Respondent to be heard or pursuant to the summary abatement powers of the Department.

V. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or the Commissioner's designee (including, but not limited to, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement

powers) or authorities with respect to any party, including Respondent.

VI. The provisions, terms and conditions of this Order shall bind Respondent, the agents, servants, employees, successors and assigns of Respondent and all persons, firms and corporations acting under or for Respondent.

VII. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and its successors (including successors in title) and assigns.

VIII. The effective date of this Order is the date that the Commissioner or the Commissioner's designee signs it.

Dated: SYRACUSE, NEW YORK

March 11, 2004

ERIN CROTTY, Commissioner
New York State Department of
Environmental Conservation

BY

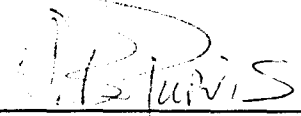


KENNETH P. LYNCH
Regional Director

TO: _____
Respondent

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order without further notice, waives the right to notice and hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein.



Respondent

BY Willie B. Purvis
TITLE Plant Manager
DATE February 19, 2004

CORPORATE ACKNOWLEDGEMENT

STATE OF NEW YORK)
: ss.:
COUNTY OF Onondaga)

On the 19th day of February in the year 2004
before me personally came Willie B. Purvis to me known,
who, being by me duly sworn did depose and say that he resides
in Marlius, New York that he is the Plant Manager of
Syracuse China Company the corporation described in and which
executed the above instrument; and that he signed his name
thereto by order of the board of directors of said corporation.



NOTARY PUBLIC

TERRI L. CASE
Notary Public, State of New York
Qualified in Onondaga County
No. 01CA6014868
Commission Expires October 19, 2006

SCHEDULE OF COMPLIANCE

1. Within 2 weeks of the effective date of the Order, Respondent shall retain a New York State licensed Professional Engineer to evaluate the sources of storm water and wastewater being discharged to the wastewater treatment plant, evaluate the operation and process control of the wastewater treatment system, and make recommendations to the Respondent on achieving compliance with the SPDES permit effluent limits. The evaluation of the wastewater treatment system shall include, at a minimum, the plate and frame press, the clarifier, cooling tower discharges, and the treatment lagoons.
2. Within 1 month of the effective date of the Order, Respondent shall submit a scope of work to the Department for review and approval. The scope of work shall address the evaluation of the treatment system.
3. By May 15, 2004, Respondent shall submit to the Department for review and approval, an approveable engineering report that identifies the causes of elevated pH conditions at Outfall 001, and makes recommendations for achieving compliance with SPDES pH permit effluent limits. The report shall, at a minimum, discuss the different sources of water discharged to the treatment lagoons; and evaluate the operation of the plate and frame press, the clarifier, and the treatment lagoons.
4. During July and August 2004, Respondent shall complete pilot studies to evaluate recommendations for achieving compliance with SPDES permit effluent pH limits.
5. By September 30, 2004, Respondent shall submit to the Department for review and approval, an approveable report, summarizing the results of pilot studies and proposing a strategy to achieve compliance with the SPDES permit effluent pH limits for Outfall 001.
6. Within 3 months of the approval of the report in item #5, Respondent shall have implemented all recommendations as noted in both the engineering report and the pilot study. Such implementation may be subject to the impact of seasonal weather conditions, in which case Respondent may apply, in writing, for one month extensions, subject to Department approval, up to July 1, 2005.



ESTABLISHED 1859

PAUL M. HANRAHAN
JOHN R. VARNEY
WALTER L. MEAGHER, JR.
DONALD A. DENTON
RAYMOND R. D'AGOSTINO

March 10, 2004

VIA HAND DELIVERY

Steven P. Eidt, P.E.
Regional Water Engineer
New York State Department
of Environmental Conservation
Division of Water, Region 7
615 Erie Boulevard West
Syracuse, New York 13204-2400

**Re: Syracuse China
SPDES No. NY 010-0137
DEC Case No. R7-20030903-81**

Dear Steve:

Enclosed please find the Consent Order executed by Syracuse China regarding the above-referenced matter, along with a check in the amount of \$3,500. As you are aware, Syracuse China has retained Robert Geary, P.E. from Barton & Loguidice, P.C. to evaluate the sources of stormwater and wastewater being discharged to the Wastewater Treatment Plant in compliance with the enclosed order.

Kindly provide us with a fully executed copy of the Consent Order upon receipt from Regional Director Kenneth P. Lynch.

Very truly yours,
HANCOCK & ESTABROOK, LLP

Wendy A. Marsh
wmarsh@hancocklaw.com

WAM/hgb
Enclosures

cc: John T. McCann, Esq. (w/o enclosures)
Bruce S. Fein (w/o enclosures)

1500 MONY TOWER I, P.O. BOX 4976, SYRACUSE, NEW YORK 13221-4976

H0307373.1

PHONE (315) 471-3151 • FAX (315) 471-3167

www.hancocklaw.com

FOIL065032

NYS Department of State

Division of Corporations

Entity Information

Selected Entity Name: SYRACUSE CHINA COMPANY

Current Entity Name: SYRACUSE CHINA COMPANY

Initial DOS Filing Date: JUNE 15, 1995

County: ONONDAGA

Jurisdiction: DELAWARE

Entity Type: FOREIGN BUSINESS CORPORATION

Current Entity Status: ACTIVE

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)
NONE

Registered Agent
NONE

NOTE: New York State does not issue organizational identification numbers.

[[Search Results](#)] [[Search the Database](#)]

[[Division of Corporations, State Records and UCC Home Page](#)] [[NYS Department of State Home Page](#)]



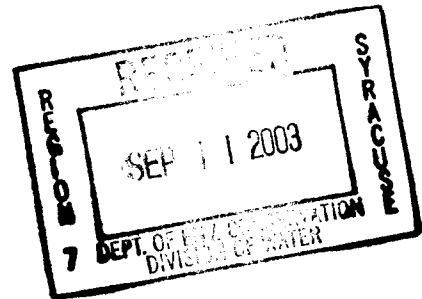
file
Syr. China
Gen

ESTABLISHED 1889

September 10, 2003

VIA FACSIMILE and REGULAR MAIL

Steven P. Eidt, P.E.
Regional Water Engineer
New York State Department
of Environmental Conservation
Division of Water, Region 7
615 Erie Boulevard West
Syracuse, NY 13204-2400




**Re: Syracuse China
SPDES No. NY 010-0137
DEC Case No. R7-20030309-81**

Dear Mr. Eidt:

As we discussed, Hancock & Estabrook, LLP represents Syracuse China in the above-referenced matter. This letter will confirm that the New York State Department of Environmental Conservation ("NYSDEC") has granted a 30-day extension of time to respond to the proposed consent order that you forwarded to Syracuse China under cover letter dated September 3, 2003.

We look forward to resolving this matter.

Very truly yours,
HANCOCK & ESTABROOK, LLP


Wendy A. Marsh
wmarsh@hancocklaw.com

WAM/sm

PAUL M. HANRAHAN
JOHN R. VARNEY
WALTER L. MEAGHER, JR.
DONALD A. DENTON
RAYMOND R. D'AGOSTINO
J. THOMAS BASSETT
RICHARD W. COOK
DAVID S. HOWE
GREGORY R. THORNTON
DOREEN A. SIMMONS
JAMES L. CANFIELD
GERALD E. STACK
JAMES E. HUGHES
JEFFREY B. ANDRUS
JANET D. CALLAHAN
THOMAS C. BUCKEL, JR.
MICHAEL L. CORP
DANIEL B. BERMAN
JOHN T. MCCANN
STEVEN R. SHAW
JOHN L. MURPHY, JR.
STEPHEN A. DONATO
KENNETH H. HOLDEN
MARK L. SCHULTE
ALAN J. PIERCE
R. JOHN CLARK
RENEE L. JAMES
DAVID G. LINGER
AUGUST E. ROHRIG, JR.
MICHAEL A. ORCITALLO
CAMILLE W. HILL
TIMOTHY P. MURPHY
MARION HANCOCK FISH
ELIZABETH A. SALVAGNO
CARA A. ALSANTE
DEBRA CHINI SULLIVAN
HOWARD E. SMITH, III
CATHERINE A. DIVINEY
JAMES R. MULLOON
PETER V. WHITE
MICHAEL L. SCROTTI
ERIC C. NORRBY
KATH E. CORCORAN
CINDY A. GRANGER
CHARLES J. SULLIVAN
MARGUERITE A. MASSETT
PETER J. CROSSETT
WENDY A. MARSH
SONYA G. BONNEAU
CHRISTIAN D. JONES
JOHN G. POWERS
LAUREL E. BAUM
HINSEY HILMER HAZELTON
JOSEPH E. MANCUSO
MARY C. MEYER
THANE JOYAL
ASHLEY L. HAYES
MAUREEN E. MANEY
MEGHAN M. MAHANEY
JAMES S. SKLODA
CHRISTOPHER G. TORD

COUNSEL

W. CARROLL COYNE
STEWART E. HANCOCK, JR.
KEVIN E. MCCORMACK
CHRISTOPHER R. PASTEL

H0246368.1

1500 MONY TOWER I, P.O. BOX 4976, SYRACUSE, NEW YORK 13221-4976
PHONE (315) 471-3151 • FAX (315) 471-3167
www.hancocklaw.com

FOIL065034



New York State Department of Environmental Conservation

MEMORANDUM

TO: Distribution
FROM: Ilse Gruber *IG*
SUBJECT: Syracuse China

DATE: October 11, 1995

Enclosed is a copy of the final consent order with Syracuse China. This order resolves Syracuse China's (Pfaltzgraff/Libby Glass) liability for penalties for past violations of the water, air, wetlands, and hazardous and solid waste programs. The order defers to the Title 13 process for remediation of the landfill and wetlands.

Thank you all for helping to bring this case to a close.

Distribution:

S. Carlomagno, Supervisor, Hazardous Waste Compliance Section
D. Palm, Regional Director (Region 7)
J. Powell, Acting Regional Attorney
S. Eidt, Regional Water Engineer ✓
L. Gross, Regional Hazardous Waste Engineer
N. Boyce, Regional Air Engineer
W. Stiles, Wildlife Biologist (Cortland)
E. Erickson, BECI (Schenectady)
S. Scharf

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of
the Environmental Conservation Law and
Title 6 of the Official Compilation of
Codes, Rules and Regulations of the
State of New York by:

**ORDER ON
CONSENT
Case No.
C7-5125-94-08**

THE PFALTZGRAFF CO., d/b/a
SYRACUSE CHINA MANUFACTURING COMPANY

Respondent

ORDER ON CONSENT

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of the Environmental Conservation Law ("ECL") and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR") and any Orders issued thereunder.

2. The Pfaltzgraff Co., d/b/a Syracuse China Manufacturing Company, (the "Respondent") is a corporation authorized to do business in the State of New York. Respondent operates a china-manufacturing facility located at 2900 Court Street, Syracuse, New York (the "facility").

3. The Department has alleged that Respondent has violated provisions of the ECL and 6 NYCRR, including, but not limited to, program areas involving water, air, solid waste, hazardous waste, and wetlands. These allegations are based on disclosures by Respondent and by inspections conducted by the Department. These allegations are based upon information reflected in correspondence, reports and other communications between the Department and

Respondent, and in the inspection notes and the reports of the Department. Based on this information, the Department alleges that Respondent has violated a number of statutory, regulatory, and permitting provisions, including, but not limited to, the following:

A. The facility has a site which has been used as an industrial landfill since approximately 1940, over half of which period the public had open access to the landfill. The Department alleges that Respondent has placed material in this landfill, including bisque, gypsum molds, broken china, cement and construction debris. The Department alleges that Respondent failed to obtain a permit in violation of ECL §27-0707.

B. The Department alleges that EP toxicity testing of landfill materials, including sludge dredged from its SPDES-permitted wastewater treatment lagoons and sludge resulting from annual cleaning of Respondent's glazing area, has revealed occasional exceedances of lead levels and that Respondent did not obtain a hazardous waste disposal permit pursuant to 6 NYCRR Part 373, in violation of ECL §27-0913.

C. The Department alleges that the encroachment by Respondent's landfill has resulted in the filling in of 1.3 acres of a regulated freshwater wetland located on its property, without Respondent's obtaining a permit pursuant to 6 NYCRR Part 663.4, in violation of ECL §24-0701.

D. The Department alleges that Respondent stored waste powdered frit containing greater than 5 ppm of lead resulting from

a failure of its dust collection system. The Department alleges that Respondent stored this material in drums for over two years without obtaining a permit pursuant to 6 NYCRR Part 373 and without complying with the hazardous waste storage requirements set forth in 6 NYCRR Parts 372 and 373, in violation of ECL §27-0907.

E. The Department alleges that wastewater with greater than 5 ppm of lead was treated and stored in the above-mentioned wastewater treatment lagoons located at the facility and that Respondent did not obtain a hazardous waste treatment and storage permit pursuant to 6 NYCRR Part 373, in violation of ECL §27-0913.

F. The Department alleges that wastewater was discharged that was not permitted by the provisions of the SPDES permit issued to the facility, in violation of ECL §17-0807(4).

G. The Department alleges that Respondent operated air contamination sources without having obtained permits to construct or certificates to operate such air contamination sources, in violation of 6 NYCRR Part 201.2.

4. Respondent neither admits nor denies any liability, fault, wrongdoing, or violation of any law, regulation, permit, order or requirement of any kind whatsoever. Respondent, as a responsible corporate citizen with a desire to further the public interest, has nonetheless agreed to undertake the terms and conditions contained in Paragraphs I and II hereof. As evidence of Respondent's good faith and commitment to continued compliance with environmental requirements, Respondent is voluntarily undertaking a closure of the room in which the drums referenced in Paragraph 3 (D) hereof were stored.

5. A portion of Respondent's landfill site has been designated by the Department as an Inactive Hazardous Waste Disposal Site under ECL Article 27, Title 13, with a Class 2 classification. The Department and Respondent have entered into an Order on Consent, the primary goal of which is the implementation of the workplan for a Remedial Investigation and Feasibility Study ("Work Plan for the RI/FS") for the Site.

6. The parties contemplate that, upon completion of the work in the Work Plan for the RI/FS, Respondent will negotiate for a consent order with the Department for the development and implementation of a Remedial Design and Remedial Action ("RD/RA"). It is the understanding of the parties that such negotiation will, among other things, address, directly or indirectly, any environmental impacts of the violations alleged in this Order relating to the wetland, solid waste disposal, as well as hazardous waste.

7. Respondent waives its right to a hearing or to otherwise contest the Department's aforementioned allegations at this time, and consents to the performance of the Environmental Benefit Project and to the issuance of this Order and agrees to be bound by its terms. Respondent, however, reserves its future right to a hearing and any other process to which it may be entitled by law with respect to such allegations, any other allegation the Department might hereafter make and any other proceeding or action the Department or the State of New York might undertake.

NOW, THEREFORE, HAVING BEEN DULY ADVISED, IT IS ORDERED THAT:

I. A. Respondent shall pay a penalty of \$30,000.00 (Thirty Thousand Dollars) for the violations alleged in this Order. The penalty shall be paid by certified check payable to the Department of Environmental Conservation and shall be due no later than November 15, 1995. The check shall be sent to the attention of Ilse Gruber, Associate Attorney, Division of Environmental Enforcement, N.Y.S.D.E.C., 50 Wolf Road, Albany, N.Y. 12233-5500.

B. With regard to any penalty due pursuant to this Order which is not paid by the specified due date, Respondent shall be liable for and shall pay interest from the due date at the rate specified by the New York Civil Practice Law and Rules for interest on a judgment.

C. In the event that Respondent fails to pay any penalty due pursuant to this Order by the date due, this Order, together with a notice of noncompliance specifying the amount may be filed and enforced by the Department as a civil judgment for the total penalty amount set forth in the notice of noncompliance, in the State of New York and in any other jurisdiction in which Respondent may reside, do business or own any assets, without the need for any further proceedings, whatsoever.

D. In addition to the penalty imposed pursuant to Subparagraph A hereof, Respondent shall, no later than November 1, 1996, participate in funding an Environmental Benefit Project ("EPB"), in accordance with the Department's Environmental Benefit Project Policy, issued August 3, 1995, at a cost to Respondent of \$20,000.00 (Twenty Thousand Dollars). The EPB shall consist of a

wetland project in Onondaga County, at a location other than the facility, to be selected by the Department and agreed to by Respondent.

II. A. Respondent, its directors, officers, employees, servants, agents, successors, and assigns (in this Paragraph II, collectively, "Respondent") ceased disposing of solid waste on its landfill as of December 31, 1994, and shall not resume such disposal unless Respondent receives a permit or other authorization therefor from the Department.

B. Respondent has been and is in compliance with the terms of the SPDES permit issued to the facility pursuant to ECL § 17-0803, and Respondent shall continue to comply with the terms thereof.

C. To the extent Respondent operates any unauthorized air contamination sources for which Respondent has not submitted to the Department applications for permits to construct and/or certificates to operate, Respondent shall expeditiously make application therefor.

III. A. Solely in the event that (1) the negotiation referred to in Paragraph 6 hereof does not result, within two (2) years from the effective date of this Order, in an RD/RA consent order which addresses, directly or indirectly, the landfill, including solid and hazardous waste, and the wetland or (2) an RD/RA consent order results from the negotiation referred to in Paragraph 6, but Respondent fails to comply with those provisions in such consent order which relate to or affect the RD/RA activities at the landfill, including solid and hazardous waste,

and the wetland, then, in either such event the Department shall have the right to take whatever action it deems necessary to require Respondent to address the violations alleged in this Order relative to the landfill, including solid and hazardous waste, and the wetland that are not being addressed in Respondent's RD/RA activities; provided, however, that the Department shall provide Respondent with notice of at least sixty (60) days before initiating any action relative to any of the issues covered in this Subparagraph.

B. Except as provided in Paragraph IV, this Order shall be in full satisfaction and settlement of all claims and liabilities that have been or might have been asserted against Respondent, its directors, officers, employees, servants, agents, successors, and assigns (in this Paragraph III, collectively, "Respondent") based upon the matters described in Paragraph 3 of this Order. The Department hereby releases Respondent from any and all such claims and liabilities. The Department further agrees that it shall not institute or initiate any action or proceeding for penalties or other relief based upon any matters described in Paragraph 3 of this Order. Compliance with this Order shall not be a defense to a proceeding commenced by the Department asserting violations unrelated to the matters described in Paragraph 3.

C. Nothing contained in this Order shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.

D. This Order does not release Respondent from any obligation to obtain permits as required by the ECL or the rules

and regulations promulgated thereunder, and the Department reserves the right, to the extent provided for by law, to initiate any action or proceeding for penalties or other relief to enforce such obligations. However, no penalty shall be assessed for any period of non-compliance occurring prior to the effective date of this Order.

IV. Except as otherwise provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any of the Department's rights, including, but not limited to, the following:

1. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondent, its officers, directors, agents, servants, employees, successors and assigns;
2. The Department's right, to the extent provided for by law, to enforce this Order against Respondent, its officers, directors, agents, servants, employees, successors or assigns, in the event that Respondent shall fail to fulfill any of the terms or provisions hereof.
3. The Department's right, to the extent provided for by law, to institute or initiate any action or proceeding for penalties or other relief for any violation of the ECL or the rules and regulations promulgated thereunder that is committed or

continued after the effective date of this Order. However, in the event of a continuing violation, no penalty shall be assessed for any period of non-compliance occurring prior to the effective date of this Order.

V. Respondent shall not suffer any penalty under this Order or the ECL or be subject to any proceeding or action if it cannot comply with any requirement hereof because of an act of God, war, riot, or condition or event beyond the control of Respondent or its agents. Respondent shall, within five business days of when it obtains knowledge of any such condition or circumstance, notify the Department in writing. Respondent shall include in such notice the measures taken and to be taken by Respondent to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Failure to give such notice within such five business day period constitutes a waiver of Respondent's defense in a proceeding seeking the imposition of penalties that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to compliance with this Order pursuant to this Paragraph.

VI. This Order does not release Respondent from any obligations it may have under any other Orders or permits it has entered into with, or received from, the Department.

VII. Notwithstanding anything to the contrary in this Order, Respondent shall have, in addition to those rights set forth in this Order, any other rights to which Respondent may be entitled under law.

VII. This Order shall be deemed to bind the Department, Respondent and its parent corporation, and their respective officers, directors, agents, servants, employees, successors and assigns.

IX. The effective date of this Order is October 6, 1995.

Dated: *October 11*, 1995
Albany, New York

**NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION**



CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of the foregoing Order, waives its rights to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained herein.

**THE PFALTZGRAFF CO., d/b/a
SYRACUSE CHINA MANUFACTURING COMPANY**

By: William Simpson

Title: PRESIDENT

Date: OCTOBER 5, 1995

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF YORK)

On this 5th day of October, 1995, before me came William H. Simpson to me known, who, being by me duly sworn, did depose and say that he resides in YORK, PA; that he is the PRESIDENT of FEALZGRAFF CO, the corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Shirley J. Painter
NOTARY PUBLIC

